

No. 7193

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United States  
Circuit Court of Appeals

For the Ninth Circuit. 15

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REX B. GOODCELL, Former Collector of Internal  
Revenue for the Sixth Collection District of California,  
Appellant,

vs.

THE ST. HELENS PETROLEUM COMPANY,  
LTD., a corporation,  
Appellee.

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Transcript of Record.

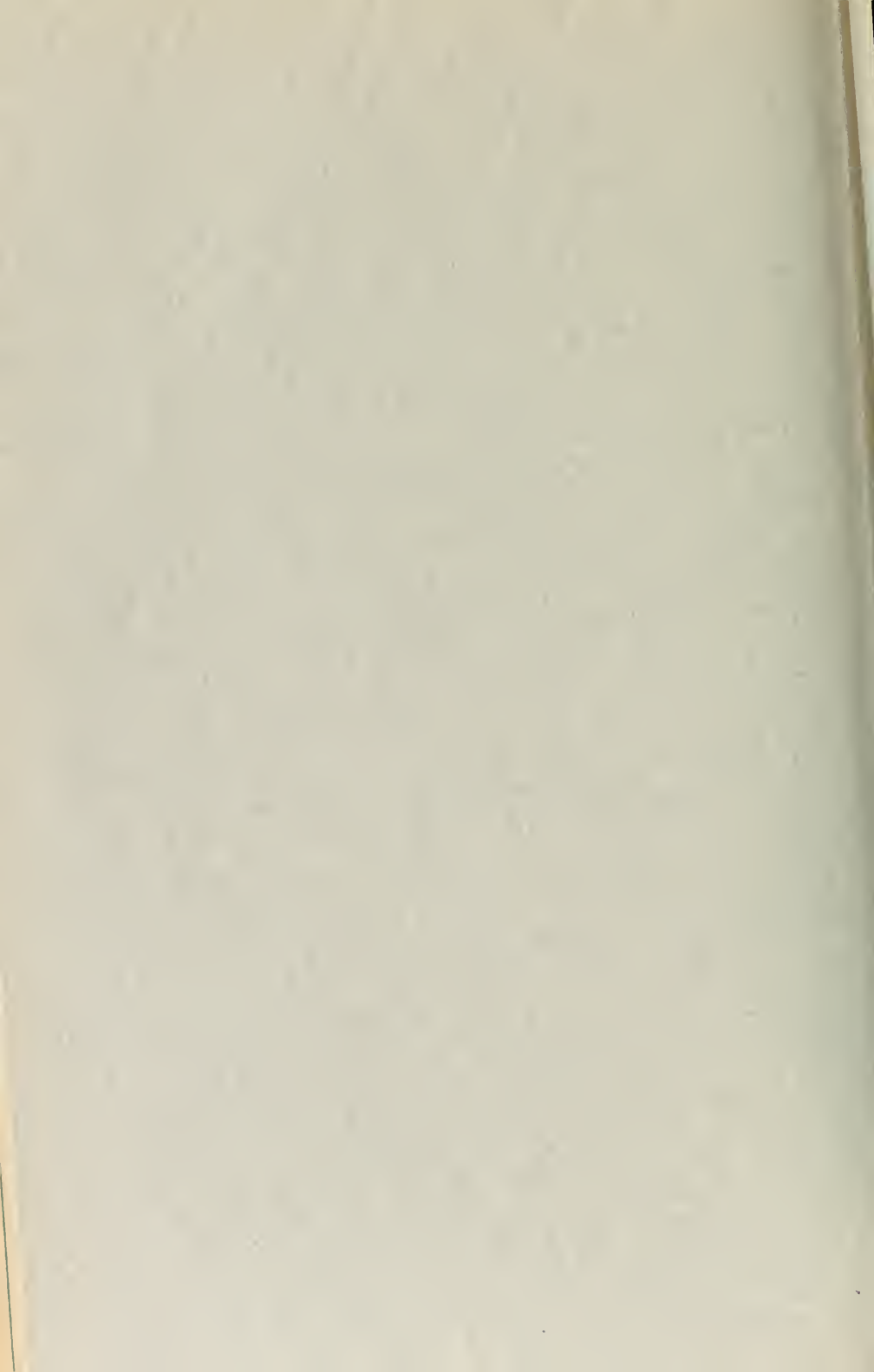
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Upon Appeal from the District Court of the United States for the  
Southern District of California, Central Division.

FILED

MAY 25 1934

PAUL P. O'BRIEN,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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REX B. GOODCELL, Former Collector of Internal  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Defendant and Appellant:

PEIRSON M. HALL, Esq.,

United States Attorney,

ROBERT W. DANIELS, Esq.,

Assistant United States Attorney,

ALVA C. BAIRD, Esq.,

Assistant United States Attorney,

EUGENE HARPOLE, Esq.,

Special Attorney,

Bureau of Internal Revenue,

Federal Building,

Los Angeles, California.

For Plaintiff and Appellee:

MILLER, CHEVALIER, PEELER

& WILSON, Esqs.,

JOSEPH D. PEELER, Esq.,

Title Insurance Building,

Los Angeles, California.

United States of America, ss.

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A

To THE ST HELENS PETROLEUM COMPANY,  
LTD., a corporation and to: MILLER, CHEVA-  
LIER, PEELER & WILSON, its attorneys,

Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 8th day of March, A. D. 1934, pursuant to Order Allowing Appeal filed FEBRUARY 17, 1934 in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action entitled THE ST. HELENS PETROLEUM COMPANY, LTD., a corporation, vs. REX B. GOODCELL, Former Collector of Internal Revenue for the Sixth Collection District of California, No. 4258-C, wherein REX B. GOODCELL, Former Collector of Internal Revenue, is Defendant and Appellant, and you are Plaintiff and Appellee to show cause, if any there be, why the Judgment in the said cause mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.



WITNESS, the Honorable Geo. Cosgrave United States District Judge for the Southern District of California, this 17th day of February, A. D. 1934, and of the Independence of the United States, the one hundred and fifty-eighth.

Geo. Cosgrave

U. S. District Judge for the Southern District of California.

Receipt is acknowledged of a copy of the within Citation, together with a copy of the Petition for Appeal, Assignments of Error and Order Allowing Appeal herein.

DATED: FEBRUARY 17th, 1934.

MILLER, CHEVALIER, PEELER & WILSON,

By Joseph D. Peeler

Attorneys for Plaintiff and Appellee.

[Endorsed]: Filed Feb 17 1934 R. S. Zimmerman,  
Clerk By Edmund L. Smith Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION.

THE ST. HELENS PETROLEUM )		
COMPANY, LTD, )		
a Corporation, )		
Plaintiff, )		
	)	At Law
-v- )	)	No. 4258-C
	)	COMPLAINT
REX B. GOODCELL, Former Collec- )		
tor of Internal Revenue for the Sixth )		
Collection District of California, )		
Defendant. )		

NOW COMES the plaintiff, The St. Helens Petroleum Company, Ltd., a corporation, and through its attorneys complains of the defendant, Rex B. Goodcell, and as and for a cause of action against said defendant alleges:

I.

That the plaintiff, The St. Helens Petroleum Company, Ltd., is and was at all times hereinafter mentioned, a corporation organized under the laws of Great Britain, and having its principal office and place of business at Los Angeles, California.

II.

That the jurisdiction of this court is dependent upon a Federal question in that the cause arises under the laws of the United States of America pertaining to internal revenue, to-wit, the Revenue Act of 1921 and subsequent Acts.

## III.

That the defendant, Rex B. Goodcell, was, from March 6, 1922 to April 5, 1926, inclusive, the Collector of Internal Revenue for the Sixth Collection District of California, duly commissioned and acting pursuant to the laws of the United States, and resides and has his office in the City of Los Angeles, in said State of California.

## IV.

That this action is brought against the defendant as an officer acting under and by virtue of the Revenue Act of 1921 and later Acts on account of acts done under color of his office, and of the Revenue Laws of the United States as will hereinafter more fully appear.

## V.

That the plaintiff duly filed with the defendant as the proper officer designated by statute, its corporation income tax returns for the fiscal year ended May 31, 1922 as required by law and within the periods prescribed by law, that is, on to-wit, August 15, 1922, November 24, 1922, February 15, 1923, and October 22, 1923.

## VI.

That the defendant, Rex B. Goodcell, as Collector of Internal Revenue for the Sixth Collection District of California, demanded and exacted payment under protest and duress from the plaintiff, of taxes shown on said returns in the following amounts and on the following dates, to-wit:

July 15, 1922	\$7,500.00
November 15, 1922	136.58
November 24, 1922	11,465.31
February 15, 1923	5,732.65
February 15, 1923	3,818.29
May 15, 1923	3,818.29
May 16, 1923	4,859.49
October 22, 1923	852.40
Credit—May 15, 1922	873.16
	<hr/>
	\$39,056.17
Less adjustment	10.00
	<hr/>
	\$39,046.17

## VII.

That thereafter, on March 11, 1929, Galen H. Welch, the succeeding Collector of Internal Revenue for the Sixth Collection District of California, exacted from plaintiff the payment under protest and duress of an additional tax of \$2,166.21, together with interest in the amount of \$819.14, making a total of \$2,985.35 on account of said income tax returns for the fiscal year ended May 31, 1922. The plaintiff has paid on account of said returns a total tax of \$41,212.38, together with interest in the amount of \$819.14.

## VIII.

On November 20, 1923, plaintiff filed with the defendant, a claim for credit on the form provided by the Commissioner of Internal Revenue, setting forth an overpayment of \$10,631.87 on said returns for the fiscal year ended May 31, 1922, and asking that said overpayment be credited against the taxes due on plaintiff's return for the fiscal year ended May 31, 1923.

## IX.

On July 17, 1926, plaintiff filed with the Collector of Internal Revenue, on the form provided by the Commissioner of Internal Revenue, a claim for refund for the fiscal year ended May 31, 1922, claiming a refund of \$7,-500.00 or such greater amount as was legally refundable, setting forth the following reasons for said claim:

“This claim for refund is filed in order to protect the taxpayer’s right to any refund that may appear to be due when final audit of the taxpayer’s 1921 returns have been completed by the Commissioner of Internal Revenue, including also any refund that may appear to be due as result of any deduction allowable under the law on account of income taxes paid to a foreign government on income from sources within the United States.”

## X.

On May 3, 1930, plaintiff filed with the Collector of Internal Revenue on the form provided by the Commissioner of Internal Revenue, a claim for refund for the fiscal year ended May 31, 1922, in the amount of \$25,-000.00, setting forth the following grounds for said claim:

“1. In computing the allowance for Depreciation on Wells, the Commissioner allowed only \$8,372.67 on the Nutt Lease, as compared with the correct figure of \$20,-395.60. The error arises from overlooking cost of \$66,132.15 prior to May 31, 1920, as set forth in Form O, Schedule VI.

“2. In computing income, the Commissioner properly allowed the deduction of 92.76 per cent of the British profits taxes accrued during the taxable year, based on the proportion of income from sources within the United

States, but failed to allow any deduction for British income taxes accrued during the taxable year. On the same basis, this deduction would be as follows:

Total income tax accrued	£ 17,827-4-0	
@ 4.14	\$ 73,804.61	
92.76% applicable to U. S. income		\$68,461.16

“Our contentions have been set forth in full in briefs heretofore filed with the Department.”

#### XI.

That on November 7, 1928, the Commissioner of Internal Revenue rejected the claim for credit filed on November 20, 1923, and the claim for refund filed on July 17, 1926, as announced in letter from the Commissioner of Internal Revenue dated November 7, 1928, symbols as follows: IT:FAR:SM-60D LMS-28935-C-28938-A-28936-D-28939-B-28937-E-28940. That the Commissioner of Internal Revenue has taken no action on the claim for refund filed May 3, 1930, neither rejecting nor allowing same, although a period of six months has elapsed since said claim was filed. That the Commissioner of Internal Revenue has refused and failed to refund or credit any of the taxes and interest overpaid for the fiscal year ended May 31, 1922.

#### XII.

That the taxes heretofore collected from the plaintiff for the fiscal year ended May 31, 1922 are excessive to the extent of \$13,617.81, for the reasons set forth in the claim for credit and the claims for refund heretofore presented to the Commissioner of Internal Revenue, which are the same as the grounds set forth herein as the basis for this proceeding.

## XIII.

That in computing the allowance for depreciation on wells with respect to the Nutt Lease, the Commissioner has allowed only \$8,372.67, whereas the correct amount is \$20,395.60. The error arises from the failure of the Commissioner of Internal Revenue to take into consideration the cost of \$66,132.15 prior to May 31, 1920, apparently through oversight.

## XIV.

During the fiscal year ended May 31, 1922, Plaintiff accrued and paid to the Government of Great Britain, an income tax in the amount of £ 17,827-4-0 sterling, which, at the rate of \$4.14 is the equivalent of \$73,804.61 in United States currency. The Commissioner of Internal Revenue has determined that the income of plaintiff from sources within the United States during the fiscal year ended May 31, 1922 was 92.76 per centum of the total net income of plaintiff. Accordingly, under Section 234 of the Revenue Act of 1921, plaintiff is entitled to a total deduction on account of said British income taxes of 92.76 per centum of \$73,804.61, or a net amount of \$68,461.16. In determining the taxes heretofore paid by the plaintiff for the fiscal year ended May 31, 1922, the Commissioner of Internal Revenue has not allowed any deduction on account of said British income taxes.

## XV.

That the defendant erroneously and illegally collected from the plaintiff, and is erroneously and illegally withholding from plaintiff and is indebted to said plaintiff in the total amount of \$11,451.60, with interest thereon as provided by law, representing amounts illegally exacted from plaintiff on account of income taxes for the fiscal year ended May 31, 1922.

## XVI.

That although often demanded the defendant has not nor has anyone on his behalf repaid or refunded said sum or sums or any part thereof, and said claim of said plaintiff herein is the sole property of plaintiff and has not been sold or assigned or transferred to any person or individual.

WHEREFORE, plaintiff prays for judgment against the defendant, Rex B. Goodcell, in the amount of \$11,-451.60, together with interest at 6 per centum from dates of payment as provided by law.

Joseph D. Peeler  
Melvin D. Wilson  
Attorneys for Plaintiff.

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF LOS ANGELES    )

CHARLES DRADER and R. W. STEPHENS being first duly sworn, on oath depose and say:

That The St. Helens Petroleum Company, Ltd., plaintiff herein, is a corporation organized under the laws of Great Britain, with its principal office and place of business at Los Angeles, California.

That said CHARLES DRADER and R. W. STEPHENS are its attorneys-at-law and in-fact in charge of its business in the United States and duly authorized to verify this complaint. That they have read the complaint and that the facts contained therein are true to the best of their knowledge and belief.

Charles Drader  
R. W. Stephens



Subscribed and sworn to before me this 6th day of November, A. D. 1930.

[Seal] Ethel E. Jones  
Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Filed Nov. 6, 1930. R. S. Zimmerman,  
Clerk By M. R. Winchell, Deputy Clerk.

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[TITLE OF COURT AND CAUSE.]

### ANSWER

Comes now the defendant, Rex B. Goodcell, and in answer to the above-entitled complaint admits, alleges and denies, to-wit:

#### I.

Denies specifically each and every allegation contained in paragraph I of said complaint.

#### II.

Admits each and every allegation contained in paragraph II of said complaint.

#### III.

Admits each and every allegation contained in paragraph III of said complaint.

#### IV.

Admits each and every allegation contained in paragraph IV of said complaint.

#### V.

Answering paragraph V, the defendant admits that plaintiff filed its corporation income tax returns for the fiscal year ended May 31, 1922, and further admits that

three of such returns were filed on August 15, 1922, November 24, 1922 and October 22, 1923, respectively.

Denies that one of said returns was filed on February 15, 1923, as alleged and avers that such return was filed on November 14, 1923.

Denies specifically each and every other allegation contained in said paragraph.

#### VI.

Answering paragraph VI, defendant admits the allegations therein contained except as to that certain payment of taxes therein alleged to have been made on July 15, 1922 in the sum of \$7,500.00. Defendant avers with regard to such payment that it was in fact made on August 15, 1922. Further answering said paragraph VI, the defendant specifically denies that the payment of the taxes therein described was made under protest and duress, as alleged.

#### VII.

Answering paragraph VII, the defendant admits the allegations contained therein except the averment therein appearing that the payment of additional tax and interest was exacted from the plaintiff under protest and duress, which averment the defendant specifically denies.

#### VIII.

Answering paragraph VIII, the defendant admits that on November 20, 1923, plaintiff filed with the defendant a claim for credit in the sum of \$10,631.87, covering the fiscal year ended May 31, 1922. In this behalf the defendant affirmatively alleges that said claim for credit was not based on the grounds alleged in plaintiff's complaint herein as required by Section 3226 of the Revised Stat-

utes as amended and re-enacted by Section 1113(a) of the Revenue Act of 1926, and further avers that, as a result thereof, the plaintiff cannot here recover on said claim.

IX.

Answering paragraph IX, defendant admits that the plaintiff on July 17, 1926, filed a claim for refund for \$7,500.00 for the fiscal year ended May 31, 1922, as alleged therein. Defendant affirmatively alleges in this behalf that said claim for refund was not based on the grounds alleged and set forth in the complaint herein as required by Section 3226 of the Revised Statutes as amended and re-enacted by Section 1113(a) of the Revenue Act of 1926, and further avers that as a result thereof, plaintiff cannot here recover on said claim.

X.

Answering paragraph X, the defendant admits that on May 3, 1930, the plaintiff filed a claim for refund of \$25,000.00 for the fiscal year ended May 31, 1922 and that said claim contained the recitals set forth in said paragraph X, but the defendant affirmatively alleges that said claim for refund was filed more than four years after the amounts sought to be recovered in this action were paid by plaintiff to the defendant, as required by Section 3223 of the Revised Statutes as amended by Section 1112 of the Revenue Act of 1926, and that by reason thereof the plaintiff cannot here recover on said claim.

XI.

Admits the allegations contained in paragraph XI of said complaint.

XII.

Denies specifically each and every allegation contained in paragraph XII of said complaint.

## XIII.

Denies specifically each and every allegation contained in paragraph XIII of said complaint.

## XIV.

Denies specifically each and every allegation contained in paragraph XIV of said complaint.

## XV.

Denies specifically each and every allegation contained in paragraph XV of said complaint.

## XVI.

Answering paragraph XVI, defendant admits that he has not repaid or refunded to the plaintiff any part of the sum sought to be recovered herein.

Denies specifically each and every other allegation contained in said paragraph.

WHEREFORE, this defendant prays that plaintiff take nothing by its complaint and that defendant have his costs of suit.

SAMUEL W. McNABB  
United States Attorney,

Ignatius F. Parker  
IGNATIUS F. PARKER,  
Assistant United States Attorney,

C. M. CHAREST,  
General Counsel, Bureau of Internal Revenue,

Alva C. Baird  
ALVA C. BAIRD,  
Special Attorney, Bureau of Internal Revenue,

Richard W. Wilson  
RICHARD W. WILSON,  
Special Attorney, Bureau of Internal Revenue.

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF LOS ANGELES    )

REX B. GOODCELL, being first duly sworn, deposes and says: That he is the defendant named in the within entitled action and is the identical person designated in the title thereof as former Collector of Internal Revenue for the Sixth Internal Revenue Collection District of California; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are herein stated on his information and belief, and as to those matters he believes it to be true.

Rex B. Goodcell  
Rex B. Goodcell.

Subscribed and sworn to before me this 30th day of December, 1930.

[Seal]

J. M. Kugler  
Notary Public.

[Endorsed]: Filed Dec. 30, 1930. R. S. Zimmerman,  
Clerk By M. L. Gaines, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STIPULATION WAIVING JURY.

IT IS HEREBY STIPULATED by and between counsel for the respective parties that trial by jury in the above case is expressly waived.

DATED: This 8th day of April, 1931.

MILLER, CHEVALIER, PEELER  
& WILSON,

By Joseph D. Peeler

Attorneys for Plaintiff,

Samuel W. McNabb,

SAMUEL W. McNABB,

United States Attorney,

Ignatius F. Parker

IGNATIUS F. PARKER,

Assistant United States Attorney,

Attorneys for Defendant.

[Endorsed]: Filed Apr. 9, 1931. R. S. Zimmerman,  
Clerk. By Murray E. Wire, Deputy Clerk.

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[TITLE OF COURT AND CAUSE.]

STIPULATION AND ORDER CONSOLIDATING  
CASES FOR TRIAL.

It is hereby stipulated by and between the plaintiff and defendant above named, through their respective attorneys, that the above-entitled cause may be consolidated for trial with the case of The St. Helens Petroleum Company,

Ltd. v. Galen H. Welch, Collector of Internal Revenue for the Sixth Collection District of California, case #4252-C, which is set for trial on the 28th day of April, 1931.

This stipulation is entered into for the reason that the above cases are so similar in fact and law that it would be a waste of time for the court and the parties concerned to try the cases separately.

Feb. 24, 1931

Joseph D Peeler

Melvin D Wilson

Attorneys for Plaintiff.

Samuel W. McNabb

SAMUEL W. McNABB,

United States Attorney.

Ignatius F. Parker,

IGNATIUS F. PARKER,

Assistant United States Attorney.

Richard W Wilson

Special Attorney, Bureau of Internal Revenue.

Attorneys for Defendant.

#### ORDER

Upon reading the above stipulation and good cause appearing therefor, the court hereby transfers the above-entitled cause to the trial calendar and department of the Honorable Judge Cosgrave.

Wm P. James

Judge of the District Court of the United States, In and for the Southern District of California, Central Division.

## CONSENT

Upon reading the above stipulation and the order of the Honorable Judge James appearing above, I hereby consent to and accept the transfer of the above cause to my department.

Geo. Cosgrave

Judge of the District Court of the United States, In and  
for the Southern District of California, Central  
Division.

## ORDER

Upon reading the above stipulation and the above order and consent transferring the above-entitled cause to the Honorable Judge Cosgrave's department, the court hereby consents and orders that the above cases be consolidated for trial before the Honorable Judge Cosgrave on the 28th day of April, 1931.

Geo. Cosgrave

Judge of the District Court of the United States, In and  
for the Southern District of California, Central  
Division.

[Endorsed]: Filed Feb. 25, 1931 R. S. Zimmerman,  
Clerk By M. L. Gaines, Deputy Clerk.



IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

ST. HELENS PETROLEUM COM-	)	
PANY, LTD., a corporation,	)	
	)	Plaintiff,
vs.	)	
	)	No. 4252
GALEN H. WELCH, Collector of In-	)	
ternal Revenue,	)	
	)	Defendant.
	)	

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ST. HELENS PETROLEUM COM-	)	
PANY, LTD., a corporation,	)	
	)	Plaintiff,
vs.	)	
	)	No. 4255
GALEN H. WELCH, Collector of In-	)	
ternal Revenue,	)	
	)	Defendant.
	)	

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ST. HELENS PETROLEUM COM-	)	
PANY, LTD., a corporation,	)	
	)	Plaintiff,
vs.	)	
	)	No. 4258
REX B. GOODCELL, Collector of In-	)	
ternal Revenue,	)	
	)	Defendant.
	)	

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MOTION TO REOPEN CASE FOR THE PURPOSE  
OF ADMITTING ADDITIONAL EVIDENCE  
AS STIPULATED

COME NOW the plaintiff and defendant by and through their respective attorneys and move this Honorable Court to reopen the above entitled cases to admit in evidence additional facts as set forth in Stipulation of Additional Facts filed herewith.

The purpose of this additional evidence is to enable the Court to determine whether it has jurisdiction of all or any part of said proceedings and, if it has jurisdiction, to assist it in determining the amount of the judgments to be entered.

DATED: This 6th day of November, 1933.

Joseph D. Peeler

Joseph D. Peeler,

Attorney for Plaintiff.

Peirson M. Hall

Peirson M. Hall, E. H.

United States Attorney,

Alva C. Baird

Alva C. Baird, E. H.

Assistant United States Attorney.

Eugene Harpole

Eugene Harpole,

Special Attorney, Bureau of Internal Revenue,

Attorneys for Defendant.

It is so Ordered:

Geo. Cosgrave

Judge.

[Endorsed]: Filed Nov 6 1933, R. S. Zimmerman,  
Clerk, By Francis E. Cross, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

SPECIAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW.

The above case came on regularly for trial on the 28th day of April, 1931, before the Court, sitting without a jury, a trial by jury having been waived by written stipulation of the parties thereto; plaintiff appearing by Joseph D. Peeler and Melvin D. Wilson, Esqs., and Miller, Chevalier, Peeler & Wilson, its attorneys, and the defendant appearing by Samuel W. McNabb, Esq., United States Attorney for the Southern District of California, Ignatius F. Parker, Esq., Assistant United States Attorney for said District, C. M. Charest, Esq., General Counsel, Bureau of Internal Revenue, and Richard W. Wilson, Esq., Special Attorney, Bureau of Internal Revenue; and evidence, both oral and documentary, having been received and the Court having fully considered the same, hereby makes the following special findings of fact:

I.

That the plaintiff, The St. Helens Petroleum Company, Ltd., is and was at all times hereinafter mentioned, a corporation organized under the laws of Great Britain, and having its principal office and place of business at Los Angeles, California.

II.

That the plaintiff filed with Rex B. Goodcell, the then Collector of Internal Revenue for the Sixth Collection District of California, its original and amended income tax returns for the fiscal year ended May 31, 1922, on August 15, 1922, November 24, 1922, February 14, 1923, and October 22, 1923.

## III.

That the plaintiff paid to the defendant, Rex B. Goodcell, as Collector of Internal Revenue, upon demand, the amounts of taxes shown on said returns in the following amounts and on the following dates, to-wit:

August 15, 1922	\$ 7,500.00
November 15, 1922	136.58
November 24, 1922	11,465.31
February 15, 1923	5,732.65
February 15, 1923	3,818.29
May 15, 1923	3,818.29
May 16, 1923	4,859.49
October 22, 1923	852.40
Credit—May 15, 1923	872.16
	<hr/>
	\$39,056.17
Less adjustment	10.00
	<hr/>
Total	\$39,046.17

## IV.

That thereafter, on March 11, 1929, the plaintiff paid to Galen H. Welch, as Collector of Internal Revenue for the Sixth Collection District of California, upon demand, an additional tax of \$2,166.21, together with interest in the amount of \$819.14, or a total of \$2,895.35, on account of said income tax returns for the fiscal year ended May 31, 1922.

## V.

That on May 3, 1930, July 17, 1926, and November 20, 1923, plaintiff filed with the Commissioner of Internal Revenue, claims for refund of income taxes paid for the fiscal year ended May 31, 1922, in the form and manner

provided by law, covering the issues raised in the complaint herein.

#### VI.

That the Commissioner of Internal Revenue has failed to take any action with respect to the claim for refund filed on May 3, 1930. That on November 7, 1928, the Commissioner of Internal Revenue rejected the claim for credit filed on November 30, 1923, and the claim for refund filed on July 17, 1926, and announced his rejection of said claims in a letter dated November 7, 1928.

#### VII.

That plaintiff is entitled to a further deduction for depreciation on wells, with respect to the Nutt Lease, in the amount of \$12,022.93, for the fiscal year ended May 31, 1922.

#### VIII.

That during the fiscal year ended May 31, 1922, plaintiff accrued and paid to the Government of Great Britain, an income tax in the amount of £17,827-4-0 Sterling, which, at the rate of \$4.14 was the equivalent of \$73,804.61 in United States currency. That the income of plaintiff from sources within the United States during the fiscal year ended May 31, 1922, was 92.76 per centum of the total net income of plaintiff from all sources during said year. The amount of British income tax allocable to United States income was \$68,461.16. Plaintiff deducted from dividends paid by it to its stockholders during said fiscal year an amount of at least \$68,461.16.

#### IX.

That the Commissioner of Internal Revenue has allowed no deduction on account of said British income taxes for

the fiscal year ended May 31, 1922, and that no refund has been made to plaintiff of any taxes paid by it on its Federal income tax returns for said fiscal year.

## X.

The taxable net income of the plaintiff for the fiscal year ended May 31, 1921, as determined by the Commissioner of Internal Revenue, was \$2,350,425.78. The profits tax of plaintiff for said fiscal year was determined under the provisions of Section 328, Revenue Acts of 1918 and 1921, as follows:

Profits tax, Section 328 (1920 rates)	\$568,803.04
Profits tax, Section 328 (1921 rates)	464,444.13
7/12 of \$568,803.04	331,801.77
5/12 of \$464,444.13	193,518.39

Total profits tax for fiscal year ended May 31, 1921, Section 328 -	\$525,320.16
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The income tax of plaintiff for said fiscal year was determined as follows:

Net income -	\$2,350,425.78
Less: Interest on United States obligations not exempt -	\$143,352.56
Profits tax -	525,320.16
	668,672.72
Amount taxable at 10% -	\$1,681,753.06
Income tax at 10% -	\$ 168,175.31

## CONCLUSIONS OF LAW.

As a conclusion of law from the foregoing facts, the Court determines that the Commissioner of Internal Revenue erred in failing and refusing to allow to plaintiff deductions on its income tax return for the fiscal year ended May 31, 1922, in the amount of \$12,022.93 for further depreciation on wells, and in the amount of \$68,461.16 for income taxes accrued and paid to the government of Great Britain, and in levying tax assessments on the basis of net income computed without the allowance of said deductions.

The court determines that the defendant, Rex B. Goodcell, erroneously and illegally collected from plaintiff the sum of \$11,451.60, and that the plaintiff is entitled to recover from defendant the sum of \$11,451.60, together with interest thereon as provided by law.

That the plaintiff is also entitled to costs of suit herein.

That judgment be entered against the defendant accordingly.

DATED: November 17, 1933.

Geo. Cosgrave  
United States District Judge

Approved as to form according to Rule 44.

Alva C. Baird  
E. H.

[Endorsed]: Filed Nov. 17, 1933. R. S. Zimmerman,  
Clerk, By Francis E. Cross, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED  
 STATES IN AND FOR THE SOUTHERN  
 DISTRICT OF CALIFORNIA  
 CENTRAL DIVISION

THE ST. HELENS PETROLEUM	)	
CO. LTD., a Corporation,	)	
	)	
	)	Plaintiff,
	)	
	)	
vs.	)	No. 4258-C.
	)	
REX B. GOODCELL, Former Collector	)	
of Internal Revenue for the Sixth Collec-	)	
tion District of California,	)	
	)	
	)	Defendant.

---

JUDGMENT ON FINDINGS.

The above case came on regularly for trial on the 28th day of April, 1931, before the Court, sitting without a jury, a trial by jury having been waived by written stipulation of the parties thereto; plaintiff appearing by Joseph D. Peeler and Melvin D. Wilson, Esqs., and Miller, Chevalier, Peeler & Wilson, its attorneys, and the defendant appearing by Samuel W. McNabb, Esq., United States Attorney for the Southern District of California, Ignatius F. Parker, Esq., Assistant United States Attorney for said District, C. M. Charest, Esq., General Counsel,



Bureau of Internal Revenue, and Richard W. Wilson, Esq., Special Attorney, Bureau of Internal Revenue; and the trial having proceeded, and oral and documentary evidence on behalf of the respective parties having been submitted to the Court for consideration and decision, and the Court, after due deliberation, having rendered its decision and filed its findings and ordered that judgment be entered in favor of plaintiff in accordance with said findings;

NOW, THEREFORE, by virtue of the law, and by reason of the findings aforesaid, it is considered by the Court that the plaintiff have judgment in the amount of \$11,451.60, together with interest at the rate of 6 per cent, as provided by law, on \$852.40, from October 22, 1923; on \$4,859.49 from May 16, 1923; on \$4,690.45 from May 15, 1923, and on \$1,049.26 from February 15, 1923, with costs taxed at \$20.00.

Judgment rendered this Nov. 17, 1933.

Geo. Cosgrave

United States District Judge.

#### CERTIFICATE OF PROBABLE CAUSE.

The Court certifies that the defendant, Rex B. Goodcell, as Collector of Internal Revenue, exacted and received payment of the monies recovered herein in the performance of his official duty, and that there was probable cause for the act done by the defendant, and that he was acting

under the directions of the Secretary of the Treasury,  
or other proper officer of the Government.

Geo. Cosgrave  
United States District Judge.

Approved as to form as required by Rule 44.

Peirson M. Hall  
Pierson M. Hall,  
E. H.  
United States Attorney.

Alva C. Baird  
Alva C. Baird,  
E. H.  
Assistant United States Attorney.  
ATTORNEYS FOR DEFENDANT.

Joseph D. Peeler  
Joseph D. Peeler,  
ATTORNEY FOR PLAINTIFF.

JUDGMENT ENTERED NOVEMBER 17th, 1933.  
R. S. ZIMMERMAN, Clerk, By Francis E. Cross,  
Deputy Clerk.

[Endorsed]: Filed Nov. 17, 1933. R. S. Zimmerman,  
Clerk, By Francis E. Cross, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

THE ST. HELENS PETROLEUM )  
COMPANY, LTD., a Corporation, )  
)  
Plaintiff and Appellee )

vs. )

At Law

) No. 4258-C.

REX B. GOODCELL, Former Col- )  
lector of Internal Revenue for the Sixth )  
Collection District of California, )  
)  
Defendant and Appellant )

BILL OF EXCEPTIONS

Be it remembered that heretofore to-wit, on the 28th day of April, 1931, the above-entitled cause came on regularly for trial at Los Angeles, California, upon the issues joined herein, before his Honor, George Cosgrave, sitting as Judge of the above-entitled Court, without a jury, a jury having been duly waived by the parties by written Stipulation as follows:

“IT IS HEREBY STIPULATED by and between counsel for the respective parties that trial by jury in the above case is expressly waived.

“Dated: This 8th day of April, 1931.

MILLER, CHEVALIER, PEELER & WILSON

BY JOSEPH D. PEELER,

Joseph D. Peeler

Attorneys for Plaintiff,

Samuel W. McNabb,

Samuel W. McNabb,

United States Attorney,

Ignatius F. Parker,

Ignatius F. Parker,

Assistant U. S. Attorney,

Attorneys for Defendant”

Messrs. Miller, Chevalier, Peeler & Wilson by Joseph D. Peeler, Esq. appeared for plaintiff, and the defendant appeared by Samuel W. McNabb, United States Attorney for the Southern District of California, Ignatius F. Parker and Louis Somers, Assistant United States Attorneys for said District, and Richard W. Wilson, Special Attorney, Bureau of Internal Revenue, and the parties introduced in evidence a Stipulation as to certain facts, which had been agreed upon by both parties, which Stipulation (omitting the Exhibits therein referred to) is as follows:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

THE ST. HELENS PETROLEUM :  
CO. LTD., a Corporation, :  
:  
Plaintiff, :

-v-

No. 4258-C.

REX B. GOODCELL, Former Col- :  
lector of Internal Revenue for the Sixth :  
Collection District of California, :  
:  
Defendant.:

STIPULATION OF FACTS.

It is hereby stipulated and agreed by the parties, plaintiff and defendant, in this action, by their respective counsel, that the following statements of fact are true and correct, and shall be accepted and used as agreed evidence in this case, provided, however, that nothing herein shall prevent either party from introducing other and further evidence, not inconsistent herewith.

I.

That the plaintiff, The St. Helens Petroleum Company, Ltd. is and was at all times hereinafter mentioned, a corporation organized under the laws of Great Britain, and having its principal office and place of business at Los Angeles, California.

## II.

That the plaintiff filed with Rex B. Goodcell, the then Collector of Internal Revenue for the Sixth Collection District of California, its original and amended income tax returns for the fiscal year ended May 31, 1922, on August 15, 1922, November 24, 1922, February 14, 1923, and October 22, 1923.

## III.

That the plaintiff paid to the defendant, Rex B. Goodcell, as Collector of Internal Revenue, upon demand, the amounts of taxes shown on said returns in the following amounts and on the following dates, to-wit:

August 15, 1922	\$ 7,500.00
November 15, 1922	136.58
November 24, 1922	11,465.31
February 15, 1923	5,732.65
February 15, 1923	3,818.29
May 15, 1923	3,818.29
May 16, 1923	4,859.49
October 22, 1923	852.40
Credit - May 15, 1922	872.16
	<hr/>
	\$39,056.17
Less adjustment	10.00
	<hr/>
Total	\$39,046.17

## IV.

That thereafter, on March 11, 1929, the plaintiff paid to Galen H. Welch, as Collector of Internal Revenue for the Sixth Collection District of California, upon demand, an additional tax of \$2,166.21, together with interest in

the amount of \$819.14, or a total of \$2,985.35, on account of said income tax returns for the fiscal year ended May 31, 1922.

#### V.

That on May 3, 1930, plaintiff filed with the Commissioner of Internal Revenue, a claim for refund of income taxes paid for the fiscal year ended May 31, 1922, in the form and manner shown by photostatic copy herewith, marked Exhibit No. 1.

#### VI.

That on July 17, 1926, plaintiff filed with the Commissioner of Internal Revenue, a claim for refund of income taxes paid for the fiscal year ended May 31, 1922, in the manner and form shown by photostatic copy herewith, marked Exhibit No. 2.

#### VII.

That on November 20, 1923, plaintiff filed with the Commissioner of Internal Revenue, a claim for credit of taxes paid for the fiscal year ended May 31, 1922, in the manner and form shown by photostatic copy herewith, marked Exhibit No. 3.

#### VIII.

That the Commissioner of Internal Revenue has failed to take any action with respect to the claim for refund filed on May 3, 1930. That on November 7, 1928, the Commissioner of Internal Revenue rejected the claim for credit filed on November 30, 1923, and the claim for re-

fund filed on July 17, 1926, and announced his rejection of said claims in a letter dated November 7, 1928.

#### IX.

That plaintiff is entitled to a further deduction for depreciation on wells, with respect to the Nutt Lease, in the amount of \$12,022.93, for the fiscal year ended May 31, 1922.

#### X.

That during the fiscal year ended May 31, 1922, the plaintiff accrued and paid to the Government of Great Britain, an income tax in the amount of £ 17,827-4-0 Sterling, which at the rate of \$4.14 was the equivalent of \$73,804.61 in United States currency. That the income of plaintiff from sources within the United States during the fiscal year ended May 31, 1922, was 92.76 per centum of the total net income of plaintiff from all sources during said year. Plaintiff contends, and defendant denies, that plaintiff is entitled to a deduction, in determining its taxable net income, of the income taxes so accrued and paid to the Government of Great Britain; but it is agreed that if said taxes are deductible, the amount of said deduction for the fiscal year ended May 31, 1922 is \$68,461.16. It is also stipulated that plaintiff deducted from the dividends paid by it to its stockholders during said fiscal year an amount of at least \$68,461.16, on account of said British income taxes.

#### XI.

That the Commissioner of Internal Revenue has allowed no deduction on account of said British income taxes for



the fiscal year ended May 31, 1922, and that no refund has been made to plaintiff of any taxes paid by it on its Federal income tax returns for the fiscal year ended May 31, 1922.

Joseph D. Peeler  
Miller, Chevalier, Peeler & Wilson,  
Counsel for Plaintiff.

Samuel W. McNabb  
SAMUEL W. McNABB,  
United States Attorney.

Ignatius F. Parker  
IGNATIUS F. PARKER,  
Assistant United States Attorney.

C. N. CHAREST,  
General Counsel, Bureau of Internal  
Revenue,

Richard W. Wilson  
Richard W. Wilson,  
Special Attorney, Bureau of Internal  
Revenue.

Approved:

-----  
United States District Judge.

[Endorsed]: Filed Apr. 28, 1931 R. S. Zimmerman,  
Clerk, By Francis E. Cross, Deputy Clerk.

(Testimony of A. P. McEachren)

A. P. McEACHREN,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

I am local secretary for the Kern River Oilfields of California, Ltd. and the St. Helens Petroleum Co. Ltd. My duties are those of office manager and chief accountant. The books of these companies have been handled under my direct supervision from July 1919 to date. I am familiar with the oil lease called the Nutt Well No. 1. It comprises 20 acres located in the Montebello Field and was acquired on May 8, 1919. The capital expenditure on the one well that was drilled on that property from the date of acquisition to June 1, 1920, amounted to \$66,132.15. They were capital additions and not included in the revenue. They were depreciable assets. In auditing the returns of the St. Helens Petroleum Company for the fiscal year ended May 31, 1921, and 1922, respectively, the Government failed to allow a depreciation on account of those sums totaling \$66,132.15 owing to inadvertence or error on the part of the Internal Revenue Agent, apparently, he overlooked the capital expenditures to Nutt Well No. 1 to May 31, 1920. He allowed depreciation to the capital additions from July 1, 1920. The period from June 1 to May 31st was a fiscal year adopted by the corporation. The figures I have given are from the books of the St. Helens Petroleum Co., Ltd. and are true and correct to the best of my knowledge and belief.

Counsel for the respective parties thereupon entered into the following Stipulation in open Court:

“MR. PEELER: There is just one thing I overlooked, and should have stated. This involves British cases and British law, and by agreement, we have not attempted to put into evidence the British law or the British cases. I don't know whether the court will take judicial notice of them automatically or not, but we would like to stipulate that the court may take judicial notice of the British law incorporated in the briefs of counsel.

“MR. WILSON: That is agreeable to the Government, your Honor.

“THE COURT: Very well.”

Pursuant to said Stipulation made in open Court, the plaintiff in its opening Brief cited the following British cases and British law:

Act of 1842, Section 54.

British Income Tax 1918, Schedule D, Par. 359.

British Income Tax 1918, Schedule D, Par. 394.

General Rules, Paragraph 420,

General Rules, Paragraph 439.

Law of Income Tax, E. M. Konstam, K. C., 1923.

Bradbury v. English Sewing Cotton Company, Ltd.,  
(1922) 2 K. B. 589.

Commissioners of Inland Revenue v. John Blott  
(H. L. 1921) 2 A. C. 171.

Gold Fields American Development Company, Ltd.,  
v. Consolidated Gold Fields of South Africa,  
Ltd., 135 The Law Times 14 (1926).

Rex v. Purdie (1914) 3 K. B. 112, 111 Times Law  
Reports 531.

Sheldrick v. South African Breweries, Ltd. (1923)  
1 K. B. 173, at 191.

Defendant cited British cases and British law as follows in his Brief:

- Ashton Gas Company v. Attorney General (1906)  
75 L. J. Ch. 1, 93 L. T. 676.
- Bart, Sir Marcus Samuel, v. The Commissioner of Inland Revenue, 34 T. L. R. 552 (Vol 7, Great Britain Tax Cases, p. 27)
- Brooke v. Commissioners of Inland Revenue (7 T. C. 261) (1918) 1 K. B. p. 257.
- Commissioners of Inland Revenue v. John Blott (H. L. 1921) 2 A. C. 171.
- Mylam (Surveyor of Taxes) v. The Market Harborough Advertiser Company, Ltd., 21 T. L. R. 201, Great Britain Tax Cases, Vol. 5, p. 95.
- Scottish Union and National Insurance Company v. New Zealand and Australian Land Company (1921), 1. App. Cas. 172.
- Sheldrick v. South African Breweries, Ltd. (1923), 1 K. B. 173.
- "Income Tax", F. G. Underhay.
- "The Law of Income Tax", Second Edition, E. M. Konstam, K. C.
- Report of Commissioner of Inland Revenue for the fiscal year ended March 31, 1922.
- "Taxation of Business in Great Britain", Department of Commerce, Trade Promotion Series, No. 60, p. 65.

Great Britain:

- Income Tax Act 1918 and Finance Acts 1919 to 1925, Inc.  
Schedule D, paragraph 359.

Schedule D, paragraph 394,  
Section 237, Act of 1918.  
General Rules, paragraph 420.  
General Rules, paragraph 439.  
General Rules, paragraph 442.

In its Reply Brief, plaintiff cited British law and British cases as follows:

Konstam, Income Tax, pp. 19 and 20.

Ashton Gas Company v. Attorney General, 75 L. J. Ch. 1.

Bradbury v. English Sewing Cotton Co., Ltd., 2 K. B. 589.

Commissioners v. Blott, 2 A. C. 171.

Gold Fields American Development Company, Ltd.  
v. Consolidated Gold Fields of South Africa,  
Ltd., 135 The Law Times, 14.

Ritson v. Phillips, 131 L. T. 384; 9 Tax. Cas. 10

Thereupon the respective parties having rested, plaintiff, by its counsel, moved for judgment on the record and asked for special Findings of Fact, and the defendant, by his counsel, moved for judgment for the defendant on the oral and documentary evidence introduced. The Court reserved its ruling on said motions until the final decision of the case.

Briefs were filed and the cause submitted for decision. Thereafter and on the 21st day of September, 1933, the Court made the following Minute Order:

At a stated term, to wit: The SEPTEMBER Term, A. D. 1933, of the District Court of the United States of America, within and for the CENTRAL Division

of the Southern District of California, held at the Court Room thereof, in the City of LOS ANGELES on THURSDAY the 21st day of SEPTEMBER in the year of our Lord one thousand nine hundred and thirty-three.  
Present:

The Honorable GEO. COSGRAVE, District Judge.

THE ST. HELENS PETRO- )		
LEUM COMPANY, LTD., a cor- )		
poration, )	Plaintiff, )	Nos. 4252
	vs. )	4255
GALEN H. WELCH, Collector of )		
Internal Revenue, )	Defendant. )	
THE ST. HELENS PETRO- )		
LEUM COMPANY, LTD., a cor- )		Nos. 4258-H
poration, )	Plaintiff, )	4045-H (Dis-
	vs. )	missed)
REX B. GOODCELL, Collector )		
of Internal Revenue. )		
KERN RIVER OILFIELDS OF )		
CALIFORNIA, LTD., a corpora- )		Nos. 4253-M
tion, )	Plaintiff )	4256-M
	vs. )	4257-J Law
REX B. GOODCELL, Collector )		
of Internal Revenue, )	Defendant. )	
KERN RIVER OILFIELDS OF )		
CALIFORNIA, LTD., a corpora- )		
tion, )	Plaintiff )	No. 4254-J Law
	vs. )	
GALEN H. WELCH, Collector of )		
Internal Revenue, )	Defendant. )	

These consolidated causes having under date of April 28, 1931 come before the Court for hearing, and having been ordered submitted on Stipulation of Facts filed and briefs to be filed, and briefs having been filed, and the Court having duly considered the matter, it is now by the Court ordered:

“The question presented in this case is whether, in computing its net taxable income, a foreign corporation is entitled to deduct income taxes paid a foreign country when such taxes so paid were, as permitted by the laws of the foreign country, deducted from dividends paid to its stockholders. The Revenue Act applicable to the years involved in clear language allows such deduction, but the government maintains that since the corporation is empowered to deduct from the dividends payable to its stockholders the amount of such tax, it does not come within the meaning of the Revenue Act.

“I think the position of the government is not well-founded. The foreign corporation in the express language of the Revenue Act is entitled to a deduction of such payments and I regard as entirely incidental the circumstance that under the laws of the foreign country the corporation is entitled to credit to the tax so paid when it comes to paying dividends to its shareholders. The in-  
statute  
terpretation sought by the government would change a/pro-  
vision of a statute in which there is no ambiguity what-  
ever. This may not be done. (Gould v. Gould, 245 U. S.  
151).

“Judgment is therefore ordered in favor of the plaintiffs with exception to defendant.

Pursuant to a Motion to re-open the case for the admission of additional evidence, and the Order of the Court made on said Motion, the following Stipulation of Additional Facts was submitted to the Court:

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

ST. HELENS PETROLEUM COMPANY, )  
LTD., a corporation, )  
Plaintiff, )  
vs. ) No. 4252

GALEN H. WELCH, Collector of Internal )  
Revenue, )  
Defendant. )

---

ST. HELENS PETROLEUM COMPANY, )  
LTD., a corporation, )  
Plaintiff, )  
vs. ) No. 4255

GALEN H. WELCH, Collector of Internal )  
Revenue, )  
Defendant. )

---

ST. HELENS PETROLEUM COMPANY, )  
LTD., a corporation, )  
Plaintiff, )  
vs. ) No. 4258

REX B. GOODCELL, Collector of Internal )  
Revenue, )  
Defendant. )

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STIPULATION OF ADDITIONAL  
FACTS

IT IS HEREBY STIPULATED AND AGREED by the parties, plaintiff and defendant in these actions, by their respective counsel, that the following statements of fact are true and correct and shall be accepted and used as agreed evidence in these cases, in addition to the evidence heretofore presented to the Court.

I.

On November 7, 1928, the Commissioner of Internal Revenue issued a letter to the St. Helens Petroleum Company, Ltd., setting forth his final determination of its tax liability for the fiscal years ended May 31, 1917 to May 31, 1922, inclusive. A copy of said letter of November 7, 1928, is attached hereto, marked Exhibit A.

II.

It is stipulated that said letter of November 7, 1928, sets forth the final determinations by the Commissioner of Internal Revenue, of the net income, income tax, and profits tax of the St. Helens Petroleum Company, Ltd., for the fiscal years ended May 31, 1921 and 1922, respectively, as well as the method and figures used in said determinations.

III.

Nothing in this stipulation of facts is to be construed as an admission by the plaintiff that said determinations and computations of the net income, income tax or profits

tax by the Commissioner of Internal Revenue, for either of the fiscal years ended May 31, 1921 and May 31, 1922, respectively, are correct, insofar as they are inconsistent with the stipulation of facts heretofore introduced in these actions.

JOSEPH D. PEELER

Joseph D. Peeler,

ATTORNEY FOR PLAINTIFF

PEIRSON M. HALL

Peirson M. Hall,

U. S. Attorney

ALVA C. BAIRD

Alva C. Baird,

Assistant U. S. Attorney

EUGENE HARPOLE

Eugene Harpole,

Special Attorney, Bureau of Internal  
Revenue

ATTORNEYS FOR DEFENDANTS

COPY

Nov. 7, 1928.

IT:AR:SM

LMS-28935-D-28939

A-28936-E-28940

B-28937

C-28938

St. Helens Petroleum Company, Ltd.,  
1100 Chapman Building,  
Los Angeles, California.

Sirs:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the fiscal years ended May 31, 1917 to May 31, 1922, inclusive, discloses a deficiency of \$277,368.73 for the fiscal years ended May 31, 1921 and May 31, 1922, and overassessments aggregating \$412,333.38 for the fiscal years ended May 31, 1917 to May 31, 1920, inclusive as shown in the attached statement.

The sections of the law above mentioned allow you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination, you are requested to execute the enclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7.

Respectfully,

D. H. BLAIR,

Commissioner.

By (Signed) C. B. Allen,  
Deputy Commissioner,

Enclosures:

Statement

Form 866

Form 882.

## STATEMENT

IT:FAR:SM-60-D

LMS-28935-C-28938

A-28936-D-28939

B-28937-E-28940

In re: St. Helens Petroleum Company, Ltd.,  
1100 Chapman Building,  
Los Angeles, California.

Fiscal Years Ended:	Deficiency in Tax	Overassessment
May 31, 1917		\$ 75,862.08
1918		130,653.69
1919		124,526.94
1920		81,290.67
1921	\$275,202.52	
1922	2,166.21	
	<hr/>	<hr/>
Totals	\$277,368.73	\$412,333.38

Reference is made to your protest dated November 26, 1926, against the findings of the Bureau relative to the audit of your income and profits tax returns for the fiscal years ended May 31, 1917 to May 31, 1922, inclusive, as set forth in Bureau letter dated November 12, 1926.

After a careful examination and review of your protest and of the additional information submitted in conference held on January 21, 1927 and subsequent thereto, you are advised that the Bureau holds that the denial of your

application for the assessment of your excess profits tax for the fiscal year ended May 31, 1917 under the provisions of Section 210 of the Revenue Act of 1917 is correct inasmuch as there has been disclosed no exceptional hardship evidenced by gross disproportion between the tax computed without the benefit of Section 210 and the tax computed by reference to the representative concerns specified in that Section.

Your profits tax liability for the fiscal years ended May 31, 1918 to May 31, 1922, inclusive, has been redetermined under the provisions of Sections 210 and 328 of the Revenue Acts of 1917, 1918 and 1921, respectively, based upon the additional information submitted.

The detailed computation of your tax liability for the fiscal years ended May 31, 1917 to May 31, 1922, inclusive, is as follows:

St. Helens Petroleum Company, Ltd.	Statement.
Year ended May 31, 1917	
Schedule 1	
Net Income	
Net income shown in Bureau	
letter dated November 12, 1926	\$143,560.83
As corrected	142,543.40
	<hr/>
Deduction	\$ 1,017.43
Deduction:	
(a) Total depreciation allowed	106,742.65
Previously allowed	105,725.22
	<hr/>
Additional depreciation	\$ 1,017.43

## Explanation of Item Changed

(a) Depreciation on wells has been adjusted in accordance with the attached schedule. No change has been made in depreciation on field equipment as previously allowed.

## Schedule 2

## Invested Capital

Capital stock		\$ 723,862.98
Surplus		1,791.96
		<hr/>
Total beginning of year shown by books as disclosed by Schedule 2, Revenue Agent's report dated September 30, 1922		\$ 725,654.94
Additions:		
(a) Increase in value of properties	\$543,384.39	
(b) Nonoperating wells	8,547.74	
(c) McLeod Lease Suspense	232,052.83	
(d) Depreciation reserve	168,094.86	
(e) Sale of capital stock	119,774.54	
(f) Unpaid dividends	2,371.48	
Total additions		1,074,225.84
		<hr/>
Total		\$1,799,880.78

St. Helens Petroleum Company, Ltd.	Statement.
Forward	\$1,799,880.78
Reductions:	
(g) Storm loss	\$ 9,337.84
(h) Depletion	245,160.57
(i) Impounded cash, McLeod Lease	295,712.73
(j) Accrued British Income Tax	46,976.95
(k) Income tax prorated	2,145.49
(l) Dividends	1140,931.61
	<hr/>
Total reductions	740,265.19
	<hr/>
Invested capital as corrected	\$1,059,615.59

#### Explanation of Items

(a) Property values with respect to leaseholds and wells have been adjusted to conform to the values shown in the attached schedules. The value allowed for field equipment is that shown by books. The McLeod Lease properties have been eliminated for invested capital purposes, since the income from this lease was impounded and not included in taxable income by reason of a suit pending against the occupants of the lands on which this lease was located.

(b) As adjusted in Schedule 2, Revenue Agent's report dated September 30, 1922.

(c) McLeod Lease items eliminated from liabilities for reasons given under item (a) above.

(d) Reserve for depreciation decreased to conform to the attached schedules after elimination of depreciation on McLeod Lease.

(e) Sale of capital stock January 24, 1917 \$337,546.44  
Average for 4-8/31 months \$119,774.54

(f) Unpaid dividends as at May 31, 1916, reduced to the amount shown in protest dated March 1, 1927.

(g) Storm loss is eliminated from invested capital since the loss occurred prior to the taxable year and is carried on the books as a deferred expense.

(h) Reserve for depletion is adjusted to conform to the attached depletion schedule.

St. Helens Petroleum Company, Ltd. Statement.

(i) Impounded cash of McLeod Lease eliminated for reasons given under item (a).

(j) Accrued British income taxes, liability for which was not set up on books.

(k) Preceding year's income tax \$3,881.28 prorated.

(l) Inasmuch as date of payment of dividend has not been furnished the total amount is eliminated from invested capital as of the beginning of the taxable year.

### Schedule 3

#### Computation of Tax

#### Excess Profits Tax

Net income, Schedule 1	\$142,543.40
Invested capital, Schedule 2	\$1,059,615.59
Less:	
.00547% account of foreign income	5,796.10
	<hr/>



Invested capital employed in the United States					\$1,053,819.49
Deduction:					
8% of invested capital				\$	84,305.56
Income	Deductions	Balance	Rate		Tax
\$142,543.40	\$84,305.56	\$58,237.84	20%		\$11,647.57
Profits tax—\$11,647.57 reduced to 5/12					\$ 4,853.15
					Income Tax
Net income		\$142,543.40			
Less: Excess profits tax		4,853.15			
Taxable at 2%		\$137,690.25		\$	2,753.81
St. Helens Petroleum Company, Ltd.					Statement.
Amounts brought forward					\$4,853.15
					2,753.81
5/12 of net income		\$59,393.08			
Less:					
Excess profits tax		4,853.15			
Taxable at 4%					2,181.60
Total tax				\$	9,788.56
Previously assessed:					
Original tax assessed, August 1917, Page 2, Line 21					\$2,054.03
Assessed September 1917, Page 3, Line 29					1,326.41
Assessed May 1918, Page 366 Line 9					5,264.04
Assessed January 1921, Account #400001					8,178.67
Assessed August, 1922, Account #400221					70,881.52
Total				\$	87,704.67

Less:

Tax abated - C - 146614	2,054.03
	<hr/>
Balance tax assessed	\$ 85,650.64
Tax liability	9,788.56
	<hr/>
Overassessment	\$ 75,862.08

Fiscal Year May 31, 1918

## Schedule 4

## Net Income

Net income shown in Bureau letter dated November 12, 1926	\$ 175,038.50
As corrected	173,397.83
	<hr/>
Deductions.	\$ 1,640.67
St. Helens Petroleum Company, Ltd.	Statement.
Deductions:	
(a) Depreciation	\$1,038.18
(b) Depletion	602.49
	<hr/>
Total deductions	\$1,640.67

## Explanation of Items Changed.

(a) The basis of this adjustment is set forth in Schedule 1(a) herein.

Total depreciation allowed	\$106,076.54
Previously allowed	105,038.36
	<hr/>
Additional depreciation	\$ 1,038.18

(b) Depletion is allowed in accordance with the attached schedules. The total allowance for the taxable year

is based on the 1917 and 1918 law and regulations proportioned to the proper periods included in the taxable year.

Depletion under 1917 law	\$95,296.71	
7/12 for fiscal year		\$ 55,589.75
Depletion under 1918 law	117,568.12	
5/12 for fiscal year		48,986.72
		<hr/>
Total allowed		\$104,576.47
Depletion previously allowed		103,973.98
		<hr/>
Additional depletion		\$ 602.49

#### Schedule 5

##### Computation of Tax - 1917 Law

Net income, Schedule 4	\$173,397.83	
Less:		
Profits tax, Section 210	10,820.02	\$10,820.02
	<hr/>	
Amount taxable at 2% and 4%	\$162,577.81	
Tax at 2%		3,251.56
Tax at 4%		6,503.11
		<hr/>
Total tax under 1917 law		\$20,574.69
St. Helens Petroleum Company, Ltd.		Statement.

#### Schedule 6

##### Computation of Tax - 1918 Law

Net income, Schedule 4	\$173,397.83	
Less:		
Profits tax, Section 328	42,465.13	\$42,465.13
	<hr/>	
Amount taxable at 12%	\$130,932.70	15,711.92
		<hr/>
Total tax under 1918 law		\$58,177.05

## SUMMARY.

7/12 of tax under 1917 law	\$12,001.90
5/12 of tax under 1918 law	24,240.44
	<hr/>
Total tax for fiscal year ended May 31, 1918	\$36,242.34
Taxes previously assessed:	
August 1918 List, Page 16, Line 11	\$22,932.60
Account #400222	143,963.43
	<hr/>
Total tax assessed	\$166,896.03
Less:	
Total tax liability	36,242.34
	<hr/>
Overassessment	\$130,653.69

Year ended May 31, 1919

Schedule 7

Net income shown in Bureau letter dated November 12, 1926	\$ 63,007.49
As corrected	62,107.06
	<hr/>

Deduction	\$ 900.43
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St. Helens Petroleum Company, Ltd.	Statement.
------------------------------------	------------

Deductions:

(a) Depreciation on wells	\$67,571.76
Depreciation on equipment	18,692.24
	<hr/>

Total allowed	\$86,264.00
Previously allowed	85,363.57
	<hr/>

Additional depreciation	900.43
-------------------------	--------

(a) The basis of this adjustment is explained in Schedule 1(a) herein.

## Schedule 8

## Computation of Tax.

Net income, Schedule 7	\$ 62,107.06
Less:	
Profits tax, Section 328	None

Amount taxable at 12% and 10%	\$62,107.06
Tax at 12% (1918) rate)	7,452.85
Tax at 10% (1919 rate)	6,210.71

## Summary of Taxes

7/12 of tax at 1918 rate	\$ 4,347.49
5/12 of tax at 1919 rate	2,587.79

Total tax liability for fiscal year ended May 31, 1919	\$ 6,935.28
---	-------------

## Tax previously assessed:

Account #400141	\$106,850.14
Account #40122	3,897.74
Account #400081	20,714.34

Total Tax assessed	\$131,462.22
Less: Total tax liability	6,935.28

Overassessment	\$124,526.94
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St. Helens Petroleum Company, Ltd. Statement.

Year ended May 31, 1920

## Schedule 9

Net income as shown in Bureau letter dated November 12, 1926	\$49,316.67
As corrected	49,599.34
Additions	\$ 282.67

## Additions:

- (a) Depreciation
- (b) Depletion

## Explanation of Items Changed

(a) Explained in Schedule 1(a) herein.	
Depreciation on wells	\$70,545.04
Depreciation on equipment	25,740.16
	<hr/>
Total allowed	\$96,285.20
Previously allowed	96,517.87
	<hr/>
Amount disallowed	232.67

(b) Depletion is allowed in accordance with the attached schedules.

Depletion previously allowed	\$61,144.03
Total allowable	61,094.03
	<hr/>
Amount disallowed	50.00

## Schedule 10

## Computation of Tax

Net income	\$49,599.34
Less:	
Profits tax, Section 328	None
	<hr/>
Amount taxable at 10%	\$49,599.34
St. Helens Petroleum Company, Ltd.	Statement.
Total tax liability (10% of \$49,599.34)	\$ 4,959.93
Total tax assessed:	
Account #400020	\$ 4,865.10
Account #400140	81,385.50
	<hr/>
Total tax assessed	\$ 86,250.60

Less:

Total tax liability 4,959.93

Overassessment \$ 81,290.67

Year ended May 31, 1921

Schedule 11

Net income as shown in Bureau  
letter dated November 12, 1926 \$2,705,115.12

As corrected 2,350,425.78

Net adjustment 354,689.34

Additions:

(a) Impounded funds \$48,790.97

(b) Increase in profit on sale  
of McLeod Lease 23,001.57

Total additions \$71,792.54

Deductions:

(c) Depreciation \$ 64,200.02

(d) Depletion 300,779.68

(e) California audit  
fee 1,110.00

(f) McLeod Lease  
excess profits  
duty 29,529.70

(g) British corpo-  
ration profits  
taxes 23,695.53

(h) London Office  
expense 7,166.95

Total deductions 426,481.88

Net adjustment as above \$ 354,689.34

St. Helens Petroleum Company, Ltd. Statement.

Explanation of Items Changed.

(a) The net income on McLeod Lease impounded funds is revised as follows:

Impounded income as shown on page 7 of office letter dated November 11, 1926	\$1,707,992.83
Add:	
Depreciation on wells and equipment	66,031.98
	<hr/>
	\$1,774,024.81
Deduct:	
Difference in value of Liberty Bonds entered on books and the value at date of release of impounded funds as shown in scheduled transmitted with letter from your representatives dated March 1, 1927	17,241.01
	<hr/>
Impounded income as corrected	\$1,756,783.80
As previously determined	1,707,992.83
	<hr/>
Increase	\$ 48,790.97

(b) The increased profit on sale of McLeod Lease is determined as follows:

Payments received in year of sale	\$1,070,000.00
Depletion sustained on cost as shown in attached schedules	25,949.37
Depreciation sustained	72,153.54
Cost or value at basic date	\$20,000.00
Cost of subsequent additions:	
Legal expenses in 1921	91,880.23
Bonus plus interest, 1921	11,578.00



Cost of equipment and labor	95,677.51	
Profit on sale for fiscal year 1921	948,967.17	
	<hr/>	<hr/>
	\$1,168,102.91	\$1,168,102.91
Profit on sale as above	948,967.17	
As previously determined	925,965.60	
	<hr/>	
Increase	\$ 23,001.57	

St. Helens Petroleum Company, Ltd. Statement.

(c) The basis of this adjustment is explained in Schedule 1(a) herein. Accumulated depreciation sustained on McLeod lease wells and equipment is included in the total depreciation allowed.

Depreciation allowed on wells	\$184,271.72
Depreciation allowed on field equipment	42,050.82
	<hr/>
Total allowed	\$226,322.54
Previously allowed	\$162,122.52
	<hr/>
Additional depreciation	\$ 64,200.02
(d) Explained in Schedule 9 (b) herein	
Total depletion allowed	\$612,925.17
Previously allowed	312,145.49
	<hr/>
Additional depletion	\$300,779.68

(e) (f) (g) and (h) These adjustments are based on the additional information furnished by your representatives under dates of January 17, 1927 and March 1, 1927.

## Schedule 12

Computation of Tax

Profits tax, Section 328 (1920 rates)		\$568,803.04
Profits tax, Section 328 (1921 rates)		464,444.13
7/12 of \$568,803.04		331,801.77
5/12 of \$464,444.13		193,518.39
		<hr/>
Total profits tax for fiscal year ended May 31, 1921, Section 328		\$525,320.16
Net income	\$2,350,425.78	
Less:		
Interest on United States Obligations not exempt	\$143,352.56	
Profits tax	525,320.16	668,672.72
	<hr/>	<hr/>
Amount taxable at 10%	\$1,681,753.06	168,175.31
		<hr/>
Total tax liability		\$693,495.47
St. Helens Petroleum Company, Ltd.		Statement.
Forward		\$693,495.47
Less taxes previously assessed:		
Account #401796	\$32,928.24	
Account #400080	18,546.31	
Account #400080	21,702.09	
Account #400041	345,116.31	418,292.95
	<hr/>	<hr/>
Deficiency		\$275,202.52

Year ended May 31, 1922

Schedule 13

Net income as shown in Bureau letter dated November 12, 1926	\$264,473.36
As corrected	245,913.17
	<hr/>
Net adjustment	\$ 18,560.19
Additions:	
(a) Depreciation	\$ 11,547.06
Deductions:	
(b) London office expense and British corporation profits tax	30,107.25
	<hr/>
Net deduction as above	\$ 18,560.19

Explanation of Items Changed

(a) Explained in Schedule 1(a) herein.

Depreciation on wells	\$131,233.37
Depreciation in equipment	46,890.24
	<hr/>
Total allowed	\$178,123.61
Previously allowed	189,670.67
	<hr/>
Amount disallowed	\$ 11,547.06

(b) This adjustment is based on the information submitted by your representatives in supplemental protest dated January 17, 1927.

St. Helens Petroleum Company, Ltd. Statement.

Schedule 14

Computation of Tax

1921 Rates

Net income	\$245,913.17	
Less:		
Profits tax, Section 328	26,779.94	\$ 26,779.94
Amount taxable at 10%	\$219,133.23	21,913.32
Total tax at 1921 rates		\$ 48,693.26

1922 Rate

Net income	\$245,913.17	
Tax on above at 12½%		30,739.15

Summary of Taxes

7/12 of tax at 1921 rates		
(\$48,693.26)		28,404.40
5/12 of tax at 1922 rates		
(30,739.15)		12,807.98
Total tax liability for fiscal year		\$ 41,212.38
Less taxes previously assessed:		
Account #402133	\$15,273.16	
Account #400040	22,930.61	
Account #400101	842.40	39,046.17
Deficiency		\$ 2,166.21

In accordance with the above conclusions, the claims listed below will be adjusted as indicated in the following schedule:

St. Helens Petroleum Company, Ltd.				Statement.
Kind	Year	Amount	Allowed	Rejected
Refund	1917	\$49,282.73	\$49,282.73	
Refund	1917	35,000.00	26,579.35	\$8,420.65
Refund	1917	10,000.00		10,000.00
Refund	1918	10,000.00	91,345.88	
Credit	1918	35,964.57	35,964.57	
Refund	1919	10,000.00	121,692.73	
			<u>Allowed</u>	
Credit 1916-1918-1920		8,054.21-1918 portion		\$3,343.24
		1919 "		2,834.21
		1920 "		1,753.62
			<u>Rejected</u>	
			1916 portion	123.14
			<u>Allowed</u>	<u>Rejected</u>
Credit & Refund 1920		6,537.23	19,537.05	
Refund	1920	10,000.00	10,000.00	
Refund	1920	50,000.00	50,000.00	
Refund	1921	50,000.00		50,000.00
Refund	1921	15,000.00		15,000.00
Refund	1922	7,500.00		7,500.00
Credit	1922	10,631.87		10,631.87

The overassessments indicated above will be made the subject of Certificates of Overassessment which will reach you in due course through the office of the Collector of Internal Revenue for your district and will be applied by that official in accordance with Section 284(a) of the Revenue Act of 1926.

The Collector of Internal Revenue will also be notified of the above rejections.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district and remittance should then be made to him.

A copy of this letter has been furnished your authorized representatives, Miller and Chevalier, Southern Building, Washington, D. C.

The right of appeal to the United States Board of Tax Appeals as indicated on page one of this letter applied only to those years in which there is a deficiency in tax as defined by Section 273 of the Revenue Act of 1926.

[Endorsed]: Filed Nov. 6, 1933 R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy Clerk.

On the 17th day of November, 1933, defendant filed a Motion for Arrest of Judgment, which said Motion, omitting the Memorandum of Points and Authorities thereto attached, is as follows:

IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

ST. HELENS PETROLEUM COM- )  
PANY, LTD. )

Plaintiff, )

) NO. 4258-C

Vs. )

) MOTION FOR

REX B. GOODCELL, )

Former Collector of Internal Revenue, ) JUDGMENT.

) Defendant.)

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Now on this 14th day of November, 1933, comes Rex B. Goodcell, defendant in the above-entitled cause, by his attorneys, Peirson M. Hall United States Attorney for the Southern District of California, Alva C. Baird, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, and moves that judgment in the above-entitled cause be arrested, as to him, upon the following grounds and for the following reasons:

1. That no substantial or sufficient evidence has been introduced in the case upon which to base a judgment for the plaintiff.

2. That this Court has no jurisdiction of the subject matter of this action, the tax having been assessed under the "special assessment" provisions of Sections 327 and 328 of the Revenue Acts of 1918 and 1921. (40 Stat. 1092, 1093).

Dated: This 14th day of November, 1933.

Peirson M. Hall ✓  
 PEIRSON M. HALL, U. S. ATTORNEY,  
 E. H.

Alva C. Baird ✓  
 ALVA C. BAIRD, ASST. U. S. ATTORNEY,  
 E. H.

Eugene Harpole ✓  
 EUGENE HARPOLE, SPECIAL ATTORNEY,  
 Bureau of Internal Revenue,  
 Attorneys for Defendant.

[Endorsed]: Filed Nov. 17, 1933 R. S. Zimmerman,  
 Clerk, By L. Wayne Thomas, Deputy Clerk

Subsequently and on the 17th day of November, 1933, the Court entered the following Minute Order of its Action upon said Motion for Arrest of Judgment:

At a stated term, to wit: The SEPTEMBER Term, A. D. 1933, of the District Court of the United States of America within and for the CENTRAL Division of the Southern District of California, held at the Court Room thereof in the City of LOS ANGELES on FRIDAY the 17th day of NOVEMBER in the year of our Lord one thousand nine hundred and thirty-three.

Present:

The Honorable GEO. COSGRAVE District Judge.

THE ST. HELENS PETROLEUM )	
COMPANY, LTD., a corporation, )	
Plaintiff, )	
vs. )	No. 4252-C-Law
GALEN H. WELCH, Collector, etc., )	
Defendant. )	
THE ST. HELENS PETROLEUM )	
COMPANY, LTD., a corporation, )	
Plaintiff, )	
vs. )	No. 4255-C-Law.
GALEN H. WELCH, Collector, etc., )	
Defendant. )	
THE ST. HELENS PETROLEUM )	
COMPANY, LTD., a corporation, )	
Plaintiff, )	
vs. )	No. 4258-C-Law.
REX B. GOODCELL, Former Col- )	
lector, etc., )	Defendant. )

The Court having duly considered the motion of the Government for arrest of Judgment, filed on November



14th, 1933, in No. 4252-C, Law; and the motions of the Government for arrest of judgment, each filed on November 17, 1933, in cases 4255-C and 4258-C, Law, respectively, and having duly considered the Memorandum of Points and Authorities filed November 16, 1933, in opposition to motions for arrest of judgment,

IT IS NOW by the Court ORDERED that the said three motions in arrest of judgment be, and the same are hereby, denied, and that exceptions be noted for the defendant.

On the said 17th day of November, 1933, the Defendant filed and presented to the Court the following Request for Findings of Fact and Conclusions of Law:

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

THE ST. HELENS PETROLEUM )	
CO. LTD., a Corporation, )	
)	
Plaintiff, )	
)	
vs. )	NO. 4258-C.
)	
REX B. GOODCELL, Former Col- )	
lector of Internal Revenue for the )	
Sixth District of California, )	
)	
Defendant. )	

REQUEST FOR FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Comes now the Defendant above-named, by and through his attorneys, Peirson M. Hall, United States Attorney

for the Southern District of California, Alva C. Baird, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, and hereby requests the Court that in rendering and making its judgment in the above-entitled cause, which has been submitted to the Court, said Court make specific findings of fact and conclusions of law upon the issues included in said cause, as set forth in the proposed Findings of Fact and Conclusions of Law hereto attached.

Peirson M. Hall ✓

PEIRSON M. HALL E. H.

U. S. Attorney,

Alva C. Baird ✓

ALVA C. BAIRD E. H.

Assistant U. S. Attorney,

Eugene Harpole

EUGENE HARPOLE,

Special Attorney Bureau of Internal Revenue,  
Attorneys for Defendant.

Considered and denied

Exceptions noted.

Geo. Cosgrave,

Judge.

## FINDINGS OF FACT.

### I.

That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action.

## II.

The tax involved in this action was assessed under the provisions of Sections 327 and 328 of the Revenue Act of 1921.

## CONCLUSIONS OF LAW.

## I.

That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action.

## II.

That this Court has no jurisdiction of the subject matter of this action, the tax involved having been assessed under the provisions of Sections 327 and 328 of the Revenue Act of 1921.

## III.

That upon the law, the plaintiff is not entitled to recover any sum whatsoever from the defendant in the above-entitled cause.

Dated: This ..... day of ....., 1933.

.....  
UNITED STATES DISTRICT JUDGE.

Approved as to form as provided by Rule 44:

.....  
.....  
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 17, 1933 R. S. Zimmerman,  
Clerk, By Francis E. Cross, Deputy Clerk.

Plaintiff presented the following Findings of Fact and Conclusions of Law to the Court on the 17th day of November, 1933:

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

THE ST. HELENS PETROLEUM CO.	)	
LTD., a Corporation,	)	
	)	
	)	Plaintiff,
	)	
	)	
vs.	)	No. 4258-C.
	)	
REX B. GOODCELL, Former Collector	)	
of Internal Revenue for the Sixth Collec-	)	
tion District of California,	)	
	)	
	)	Defendant.

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SPECIAL FINDINGS OF  
FACT AND CONCLUSIONS OF LAW.

The above case came on regularly for trial on the 28th day of April, 1931, before the Court, sitting without a jury, a trial by jury having been waived by written stipulation of the parties thereto; plaintiff appearing by Joseph D. Peeler and Melvin D. Wilson, Esqs., and Miller, Chevalier, Peeler & Wilson, its attorneys, and the defendant appearing by Samuel W. McNabb, Esq., United States Attorney for the Southern District of California, Ignatius F. Parker, Esq., Assistant United States Attorney for said District, C. M. Charest, Esq., General Counsel, Bureau of Internal Revenue, and Richard W. Wilson, Esq., Special Attorney, Bureau of Internal Revenue; and evidence, both oral and documentary, having been re-

ceived and the Court having fully considered the same, hereby makes the following special findings of fact:

## I.

That the plaintiff, The St. Helens Petroleum Company, Ltd. is and was at all times hereinafter mentioned, a corporation organized under the laws of Great Britain, and having its principal office and place of business at Los Angeles, California.

## II.

That the plaintiff filed with Rex B. Goodcell, the then Collector of Internal Revenue for the Sixth Collection District of California, its original and amended income tax returns for the fiscal year ended May 31, 1922, on August 15, 1922, November 24, 1922, February 14, 1923, and October 22, 1923.

## III.

That the plaintiff paid to the defendant, Rex B. Goodcell, as Collector of Internal Revenue, upon demand, the amounts of taxes shown on said returns in the following amounts and on the following dates, to-wit:

August 15, 1922	\$ 7,500.00
November 15, 1922	136.58
November 24, 1922	11,465.31
February 15, 1923	5,732.65
February 15, 1923	3,818.29
May 15, 1923	3,818.29
May 16, 1923	4,859.49
October 22, 1923	852.40
Credit - May 15, 1923	872.16
	<hr/>
	\$39,056.17
Less adjustment	10.00
	<hr/>
Total	\$39,046.17

## IV.

That thereafter, on March 11, 1929, the plaintiff paid to Galen H. Welch, as Collector of Internal Revenue for the Sixth Collection District of California, upon demand an additional tax of \$2,166.21, together with interest in the amount of \$819.14, or a total of \$2,895.35, on account of said income tax returns for the fiscal year ended May 31, 1922.

## V.

That on May 3, 1930, July 17, 1926 and November 20, 1923, plaintiff filed with the Commissioner of Internal Revenue, claims for refund of income taxes paid for the fiscal year ended May 31, 1922, in the form and manner provided by law, covering the issues raised in the complaint herein.

## VI.

That the Commissioner of Internal Revenue has failed to take any action with respect to the claim for refund filed on May 3, 1930. That on November 7, 1928, the Commissioner of Internal Revenue rejected the claim for credit filed on November 30, 1923, and the claim for refund filed on July 17, 1926, and announced his rejection of said claims in a letter dated November 7, 1928.

## VII.

That plaintiff is entitled to a further deduction for depreciation on wells, with respect to the Nutt Lease, in the amount of \$12,022.93, for the fiscal year ended May 31, 1922.

## VIII.

That during the fiscal year ended May 31, 1922, plaintiff accrued and paid to the Government of Great Britain,

an income tax in the amount of £17,827-4-0 Sterling, which, at the rate of \$4.14 was the equivalent of \$73,804.61 in United States currency. That the income of plaintiff from sources within the United States during the fiscal year ended May 31, 1922, was 92.76 per centum of the total net income of plaintiff from all sources during said year. The amount of British income tax allocable to United States income was \$68,461.16. Plaintiff deducted from dividends paid by it to its stockholders during said fiscal year an amount of at least \$68,461.16

## IX.

That the Commissioner of Internal Revenue has allowed no deduction on account of said British income taxes for the fiscal year ended May 31, 1922, and that no refund has been made to plaintiff of any taxes paid by it on its Federal income tax returns for said fiscal year.

## X.

The taxable net income of the plaintiff for the fiscal year ended May 31, 1921, as determined by the Commissioner of Internal Revenue, was \$2,350,425.78. The profits tax of plaintiff for said fiscal year was determined under the provisions of Section 328, Revenue Acts of 1918 and 1921, as follows:

Profits tax, Section 328 (1920 rates)	\$568,803.04
Profits tax, Section 328 (1921 rates)	464,444.13
7/12 of \$568,803.04	331,801.77
5/12 of \$464,444.13	193,518.39

Total profits tax for fiscal year ended May 31, 1921, Section 328 -	\$525,320.16
--	--------------

The income tax of plaintiff for said fiscal year was determined as follows:

Net income –		\$2,350,425.78
Less: Interest on United States obligations not exempt –	\$143,352.56	
Profits tax –	525,320.16	668,672.72
<hr/>		
Amount taxable at 10% –		\$1,681,753.06
Income tax at 10% –		\$ 168,175.31

#### CONCLUSIONS OF LAW

As a conclusion of law from the foregoing facts, the Court determines that the Commissioner of Internal Revenue erred in failing and refusing to allow to plaintiff deductions on its income tax return for the fiscal year ended May 31, 1922, in the amount of \$12,022.93 for further depreciation on wells, and in the amount of \$68,461.16 for income taxes accrued and paid to the government of Great Britain, and in levying tax assessments on the basis of net income computed without the allowance of said deductions.

The court determines that the defendant, Rex B. Goodcell, erroneously and illegally collected from plaintiff the sum of \$11,451.60, and that the plaintiff is entitled to recover from defendant the sum of \$11,451.60, together with interest thereon as provided by law.

That the plaintiff is also entitled to costs of suit herein.



That judgment be entered against the defendant accordingly.

DATED: November 17, 1933.

Geo. C. Cosgrave  
United States District Judge.

Approved as to form according to Rule 44.

Alva C. Baird  
E. H.

[Endorsed]: Filed Nov. 17, 1933. R. S. Zimmerman,  
Clerk, By Francis E. Cross, Deputy Clerk.

Whereupon the Court accepted the proposed Findings of Fact and Conclusions of Law submitted by the Plaintiff, and adopted, made and entered the same as it Findings of Fact and Conclusions of Law herein and rejected the Findings of Fact and Conclusions of Law requested by the defendant to which the defendant noted an exception and on the 24th day of November, 1933, the following Order was duly made and entered by the Court:

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

ST. HELENS PETROLEUM COM-	)	
PANY, LTD., a corporation,	)	
	)	
Plaintiff.	)	NO. 4258-C.
	)	
vs.	)	ORDER
	)	ALLOWING
REX B. GOODCELL, former Col-	)	EXCEPTIONS
lector of Internal Revenue,	)	
	)	
Defendant.	)	

IT IS ORDERED that exception in favor of the defendant, to the Court's action in adopting and entering the Conclusions of Law and Judgment presented by the plaintiff and in refusing to adopt the Findings of Fact and Conclusions of Law presented by the defendant, be entered on the minutes of the court as of the 17th day of November, 1933, by the Clerk, nunc pro tunc.

Geo. Cosgrave

UNITED STATES DISTRICT JUDGE

Approved as to form under Rule 44 and no objection offered to entry of the Order.

Joseph D. Peeler

Attorney for Plaintiff.

[Endorsed]: Filed Nov. 24, 1933 R. S. Zimmerman,  
Clerk, By L. Wayne Thomas, Deputy Clerk.

STIPULATION RE APPROVAL OF BILL OF  
EXCEPTIONS

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for Plaintiff, Appellee, and Defendant, Appellant, that the foregoing Bill of Exceptions contains all evidence given and proceedings had in the trial of this action material to the Appeal of defendant, and that it may be approved, allowed and settled by the Judge in the above-entitled Court as correct in all respects; that the same shall be made a part of the record in said case and be the Bill of Exceptions therein and that said Bill of Exceptions may be used by either plaintiff or defendant upon any Appeal taken by plaintiff or defendant, and that said Bill may be certified and signed by the Judge upon presentation of this Stipulation without further notice to either party hereto or to their respective counsel.

Dated: This 26th day of April, 1934.

MILLER, CHEVALIER, PEELER & WILSON,  
BY Joseph D. Peeler  
Attorneys for Plaintiff and Appellee.

Peirson M. Hall D  
PEIRSON M. HALL,  
United States Attorney,

Robert W. Daniels  
ROBERT W. DANIELS,  
Asst. U. S. Attorney,

Alva C. Baird, E. H.

ALVA C. BAIRD,

Assistant U. S. Attorney

Eugene Harpole,

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue,

Attorneys for Defendant and Appellant.

ORDER APPROVING AND SETTLING BILL OF  
EXCEPTIONS

The *following* Bill of Exceptions duly proposed and agreed upon by counsel for the respective parties, is correct in all respects and is hereby approved, allowed and settled and made a part of the record herein and said Bill of Exceptions may be used by the parties plaintiff or defendant upon any appeal taken by either party plaintiff or defendant.

Dated: This 27<sup>th</sup> day of April, 1934.

Geo Cosgrave

UNITED STATES DISTRICT JUDGE.

[Endorsed]: Filed Apr 27 1934 R. S. Zimmerman,  
Clerk By L. Wayne Thomas Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER EXTENDING TIME WITHIN WHICH TO  
SERVE AND FILE BILL OF EXCEPTIONS  
AND EXTENDING TERM.

On motion of Peirson M. Hall, United States Attorney for the Southern District of California, Alva C. Baird, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, and good cause appearing therefor;

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions is hereby extended to and including February 17, 1934.

IT IS FURTHER ORDERED that for the purpose of making and filing the Bill of Exceptions herein and having same settled and allowed, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including February 17, 1933.

Dated: November 23, 1933.

Geo. Cosgrave  
United States District Judge

[Endorsed]: Filed Nov. 24, 1933. R. S. Zimmerman,  
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER EXTENDING TERM

Upon motion of the Defendant, and good cause appearing therefor,

IT IS ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein, was entered, the Term of this Court is hereby extended to and including May 8, 1934.

DATED: February 7, 1934.

Geo. Cosgrave  
United States District Judge

[Endorsed]: Filed Feb 7—1934 R. S. Zimmerman,  
Clerk. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER EXTENDING TIME WITHIN WHICH TO  
SERVE AND FILE BILL OF EXCEPTIONS

Upon motion of the Defendant, and good cause appearing therefor:

IT IS ORDERED that the time within which the Defendant herein may serve and file his proposed Bill of Exceptions is hereby extended to and including May 8, 1934.

DATED: February 17, 1934.

Geo. Cosgrave  
United States District Judge

[Endorsed]: Filed Feb 17 1934 R. S. Zimmerman,  
Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

PETITION FOR APPEAL

TO: THE HONORABLE GEORGE COSGRAVE,  
JUDGE OF THE ABOVE COURT:

NOW COMES the Defendant, Rex B. Goodcell, Former Collector of Internal Revenue for the Sixth Collection District of California, and feeling himself aggrieved by the Judgment entered in this cause, hereby prays that an appeal may be allowed, to-wit: from the United States District Court for the Southern District of California to the United States Circuit Court of Appeals for the Ninth Circuit, and in connection with this Petition Petitioner hereby presents his Assignment of Errors.

DATED: FEBRUARY 16th, 1934.

Peirson M. Hall E. H.  
PEIRSON M. HALL,  
United States Attorney,  
Alva C. Baird E. H.  
ALVA C. BAIRD,  
Assistant U. S. Attorney,  
Eugene Harpole.  
EUGENE HARPOLE,  
Special Attorney, Bureau  
of Internal Revenue,  
Attorneys for Defendant.

[Endorsed]: Filed Feb 16 1934 R. S. Zimmerman,  
Clerk By Edmund L. Smith Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

THE ST. HELENS PETROLEUM )		
CO., LTD., )		
a corporation, )		
Plaintiff, )		
	)	No. 4258-C.
vs. )	)	ASSIGN-
	)	MENT OF
REX B. GOODCELL, Former Collec- )	)	ERRORS
tor of Internal Revenue for the Sixth )	)	
District of California, )	)	
	)	
Defendant. )	)	

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The Defendant and Appellant above-named makes and files the following assignment of errors upon which he will rely in the prosecution of his appeal from the judgment of this Court entered herein on the 17th day of November, 1933.

I.

The Court erred in rendering judgment against the defendant and in favor of the plaintiff in the sum of \$11,451.60, together with interest thereon and costs taxed in the sum of \$20.00, in that the evidence introduced herein, the facts stipulated, and those facts established and found therefrom by the Court and the record in this cause are insufficient to support a judgment in favor of the plaintiff in said amount, or in any other sum, or at all.



## II.

The Court erred in rendering judgment for the plaintiff and against the defendant herein, for the reason that the evidence introduced and facts stipulated disclose that plaintiff is a corporation organized under the laws of Great Britain which, during the fiscal year ended May 31, 1922, accrued and paid to the Government of Great Britain an income tax equivalent to \$73,804.61 in United States currency and that the plaintiff deducted from the dividends paid by it to its stockholders during said fiscal year an amount of at least \$68,461.16 on account of said British income taxes.

## III.

The Court erred in rendering judgment for the plaintiff and against the defendant herein for the reason that the facts found by the Court are insufficient to support a judgment for the plaintiff, the Court having found from the evidence introduced and facts stipulated herein:

## “I.

“That the plaintiff, The St. Helens Petroleum Company, Ltd. is and was at all times hereinafter mentioned, a corporation organized under the laws of Great Britain, and having its principal office and place of business at Los Angeles, California.

## “VIII.

“That during the fiscal year ended May 31, 1922, plaintiff accrued and paid to the Government of Great Britain, an income tax in the amount of £17,827-4-0 Sterling, which, at the rate of \$4.14 was the equivalent of \$73,804.61 in United States currency. That the income of plaintiff from sources within the United States during the fiscal year ended May 31, 1922, was 92.76 per centum of the total net income of plaintiff from all sources during

said year. The amount of British income tax allocable to United States income was \$68,461.16. Plaintiff deducted from dividends paid by it to its stockholders during said fiscal year an amount of at least \$68,461.16.

“IX.

“That the Commissioner of Internal Revenue has allowed no deduction on account of said British income taxes for the fiscal year ended May 31, 1922, and that no refund has been made to plaintiff of any taxes paid by it on its Federal income tax returns for said fiscal year.

“X.

“The taxable net income of the plaintiff for the fiscal year ended May 31, 1921, as determined by the Commissioner of Internal Revenue, was \$2,350,425.78. The profits tax of plaintiff for said fiscal year was determined under the provisions of Section 328, Revenue Acts of 1918 and 1921, as follows:

Profits tax, Section 328 (1920 rates)	\$568,803.04	
Profits tax, Section 328 (1921 rates)	464,444.13	
7/12 of \$568,803.04	331,801.77	
5/12 of \$464,444.13	193,518.39	

Total profits tax for fiscal year ended May 31, 1921, Section 328—	\$525,320.16
--	--------------

The income tax of plaintiff for said fiscal year was determined as follows:

Net income—		\$2,350,425.78
Less: Interest on United States obligations not exempt—	\$143,352.56	
Profits tax—	525,320.16	668,672.72
Amount taxable at 10%—		\$1,681,753.06
Income tax at 10%—		\$ 168,175.31”

## IV.

The Court erred in finding and concluding as a matter of law herein that any part of the amount of \$68,461.16 accrued and paid by the plaintiff to the Government of Great Britain as an income tax during the fiscal year ended May 31, 1922, and deducted by plaintiff from dividends paid by it to its stockholders during said fiscal year was deductible from plaintiff's gross income for said year in computing the correct income tax due from it to the Government of the United States.

## V.

The Court erred in refusing to adopt the Defendant's Proposed Finding of Fact number I, which reads as follows:

## "I.

"That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a judgment in its favor in the above-entitled action," for the reason that the record and the evidence in this case support and require said Proposed Finding of Fact.

## VI.

The Court erred in refusing to adopt the Defendant's Proposed Finding of Fact number II, which reads as follows:

## "II.

"The tax involved in this action was assessed under the provisions of Sections 327 and 328 of the Revenue Act of 1921",

for the reason that the record and the evidence in this case disclose that the tax involved in this action was assessed under the provisions of Sections 327 and 328 of the Revenue Acts of 1918 and 1921.

## VII.

The Court erred in refusing to adopt the Defendant's Proposed Conclusions of Law numbered I, II and III, which read as follows:

## "I.

"That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action.

## "II.

"That this Court has no jurisdiction of the subject matter of this action, the tax involved having been assessed under the provisions of Sections 327 and 328 of the Revenue Act of 1921.

## "III.

"That upon the law, the plaintiff is not entitled to recover any sum whatsoever from the defendant in the above-entitled cause",

for the reason that the evidence introduced and the facts found by the Court in this action support and require the adoption of said Conclusions of Law and disclose that the Court is without power or jurisdiction to enter a judgment for the plaintiff herein.

## VIII.

The Court erred in concluding as a matter of law that the Commissioner of Internal Revenue erred in failing and refusing to allow to plaintiff a deduction on its income tax return for the fiscal year ended May 31, 1922, in the amount of \$68,461.16 for income taxes accrued and paid to the Government of Great Britain, for the reason that the evidence introduced and the facts found therefrom by the Court disclose that the amount of \$68,461.16 so paid

by plaintiff was by it deducted from dividends paid by it to its stockholders during said fiscal year.

#### IX.

The Court erred in denying Defendant's Motion for Arrest of Judgment herein for the reason that the evidence introduced herein and the facts found therefrom by the Court disclose that plaintiff's income and profits taxes for the fiscal year ended May 31, 1922, were assessed under the "Special Assessment" provisions of Sections 327 and 328 of the Revenue Acts of 1918 and 1921, and the Court is without power or jurisdiction to recompute the tax determined by the Commissioner of Internal Revenue.

#### X.

The Court erred in holding that it had jurisdiction or power to review the determination of the Commissioner of Internal Revenue of the plaintiff's net income and the amount of income and profits tax due thereon for the taxable year ending May 31, 1922, for the reason that said net income and the tax due thereon were determined by the Commissioner of Internal Revenue under the "Special Assessment" provisions of Sections 327 and 328 of the Revenue Acts of 1918 and 1921 (40 Stat. 1092, 1093).

#### XI.

That the Court erred in denying the defendant's Motion for Arrest of Judgment herein for the reason that there was no substantial or sufficient evidence introduced in the case upon which to base a judgment for the plaintiff and the further reason that the Court had no jurisdiction or power to review the discretion of the Commissioner of Internal Revenue in determining plaintiff's net income and the tax due thereon for the taxable year ending May 31,

1922, the tax having been determined and assessed under the "Special Assessment" provisions of Sections 327 and 328 of the Revenue Acts of 1918 and 1921 (40 Stat. 1092, 1093).

#### XII.

The Court erred in its Conclusions of Law for the reason that said Conclusions are not supported by the facts found by the Court herein.

#### XIII.

The Court erred in concluding as a matter of law that the defendant had illegally collected from the plaintiff the sum of \$2,985.35 and that the plaintiff is entitled to judgment against the defendant for the following reasons: (1) That the Court was and is without power or jurisdiction to review the discretion of the Commissioner of Internal Revenue in determining the plaintiff's net income and the tax due thereon for the taxable year ending May 31, 1922, the tax having been determined and assessed under the "Special Assessment" provisions of Sections 327 and 328 of the Revenue Acts of 1918 and 1921 (40 Stat. 1092, 1093); (2) That the tax, of which a refund is sought in this action, was determined, assessed, collected and paid as an excess profits tax within the meaning of sections 327 and 328 of the Revenue Acts of 1918 and 1921.

#### XIV.

The Court erred in adopting its Finding of Fact numbered X for the reason that the same is not supported by the evidence in that the evidence and pleadings disclose that plaintiff's income tax for the taxable year ending May 31, 1922 was not increased by the Commissioner of Internal Revenue but that the deficiency determined arose

from additional excess profits tax determined by the Commissioner.

Dated: This 16th day of February, 1934.

Peirson M. Hall E. H.  
 PEIRSON M. HALL,  
 U. S. Attorney,  
 Alva C. Baird E. H.  
 ALVA C. BAIRD,  
 Asst U. S. Attorney,  
 Eugene Harpole  
 EUGENE HARPOLE,  
 Special Attorney, Bureau  
 of Internal Revenue.  
 Counsel for Defendant.

[Endorsed]: Filed Feb 16 1934 R. S. Zimmerman,  
 Clerk By Edmund L. Smith, Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

### ORDER ALLOWING APPEAL

IT IS HEREBY ORDERED that the appeal prayed for in the Petition for Appeal in the above entitled cause be allowed.

DATED: FEBRUARY 17, 1934.

Geo. Cosgrave  
 United States District Judge.

[Endorsed]: Filed Feb. 17 1934 R. S. Zimmerman,  
 Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

AMENDED PRAECIPE

TO: R. S. Zimmerman, Clerk of the United States District Court, Southern District of California:

YOU ARE HEREBY REQUESTED to make a Transcript of Record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above-entitled cause, and to include in said Transcript of Record, the following papers:

1. Citation on Appeal.
2. Complaint.
3. Answer.
4. Stipulation Waiving Jury.
5. Stipulation and Order Consolidating Cases for Trial.
6. Motion and Order Re-opening cases for additional evidence.
7. Court's Findings of Fact and Conclusions of Law.
8. Judgment.
9. Order, dated November 23, 1933, Extending Time Within Which to Serve and File the Bill of Exceptions and Extending Term.
10. Order, dated February 7, 1934, Extending Term.
11. Petition for Appeal.
12. Assignment of Errors on Appeal.
13. Order Extending Time Within Which to Serve and File Bill of Exceptions, dated February 17, 1934.
14. Order Allowing Appeal.



## 15. Bill of Exceptions.

- (a) Stipulation Waiving Jury.
- (b) Stipulation of Facts with Exhibits omitted.
- (c) Testimony of A. E. McEachren.
- (d) Stipulation of Counsel and citations of British Law and Cases.
- (e) Minute Order dated September 21, 1933.
- (f) Stipulation of Additional Facts.
- (g) Defendant's Motion for Arrest of Judgment with Memorandum of Points and Authorities Omitted.
- (h) Minute Order dated November 17, 1933.
- (i) Defendant's Request for Findings of Fact and Conclusions of Law.
- (j) Plaintiff's Findings of Fact and Conclusions of Law.
- (k) Order Allowing Exceptions.

## 16. Clerk's Certificate and this Amended Praecipe.

Dated: This 26th day of April, 1934.

Peirson M. Hall     D.  
 PEIRSON M. HALL,  
                     United States Attorney.

Robert W. Daniels  
 ROBERT W. DANIELS,  
 Assistant United States Attorney.

Alva C. Baird     E. H.  
 ALVA C. BAIRD,  
 Assistant United States Attorney.

Eugene Harpole,  
 EUGENE HARPOLE,  
 Special Attorney, Bureau of Internal Revenue,  
 Attorneys for Defendant and Appellant.

## STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Appellant and Appellee that the foregoing Amended Praecipe may be filed, shall be used in lieu of and replace all Praecipis heretofore filed for the purpose of the preparation of the record upon Appeal in the above-entitled action; that in preparing the record herein, the Clerk of the United States District Court may omit all endorsements except the endorsements of the filing date, from the papers requested in the foregoing Amended Praecipe.

MILLER, CHEVALIER, PEELER  
& WILSON,

BY Joseph D. Peeler

Attorneys for Plaintiff and Appellee.

Peirson M. Hall,

PEIRSON M. HALL,

United States Attorney,

Robert W. Daniels

ROBERT W. DANIELS,

Assistant United States Attorney,

Alva C. Baird—E. H.

ALVA C. BAIRD,

Assistant United States Attorney.

Eugene Harpole

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue,

Attorneys for Defendant and Appellant.

[Endorsed]: Filed Apr 27 1934 R. S. Zimmerman,  
Clerk By L. Wayne Thomas Deputy Clerk

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 92 pages, numbered from 1 to 92 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; complaint; answer; stipulation waiving jury; stipulation and order consolidating cases for trial; motion to reopen case for the purpose of admitting additional evidence as stipulated; special findings of fact and conclusions of law; judgment; bill of exceptions; orders extending time within which to serve and file bill of exceptions; order extending term to file bill of exceptions; petition for appeal; assignment of errors; order allowing appeal, and amended praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$            and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of May, in the year of Our Lord One Thousand Nine Hundred and Thirty-four and of our Independence the One Hundred and Fifty-eighth.

R. S. ZIMMERMAN,

Clerk of the District Court of the  
United States of America, in  
and for the Southern District  
of California.

By

Deputy.